

TO BE CIRCULATED IN ENGLISH, SPANISH, RUSSIAN AND CHINESE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NEW YORK

KHALIMA NIX DEKHKANOVA and NAZOKAT R.
ATAKHANOVA, individually and on behalf of all others
similarly situated,

Plaintiffs,

Case No. 16-CV-06869(RLM)

- against -

BNV HOME CARE AGENCY, INC. a/k/a BNV HOME
CARE SERVICES, INC. and BNV HOME CARE
SERVICES INC. (BKLYN),

Defendants.

NOTICE OF SETTLEMENT OF CLASS AND COLLECTIVE ACTION LAWSUIT

TO: All individuals employed as Home Health Care Workers by Defendants BNV HOME CARE AGENCY, INC. a/k/a BNV HOME CARE SERVICES, INC. and BNV HOME CARE SERVICES INC. (BKLYN) in New York, and who worked more than forty hours in any given week from January 1, 2015 through and including October 13, 2015. Collectively, all Class Members are referred to as the “Class” or “Settlement Class”.

PLEASE READ THIS NOTICE CAREFULLY

This Notice relates to a proposed settlement of federal Fair Labor Standards Act ("FLSA") and New York Labor Law ("NYLL") overtime claims by individuals who worked as Home Health Care Workers for BNV Home Care Agency, Inc. a/k/a BNV Home Care Services, Inc. and BNV Home Care Services Inc. (BKLYN) (collectively "BNV") in New York at any time from January 1, 2015 through and including October 13, 2015 (the "Relevant Period"). This notice has been authorized by the United States District Court for the Eastern District of New York. It contains important information as to your right to receive a settlement check, to object to the settlement, or to elect not to be included in the settlement by withdrawing from the case ("opt-out").

BNV has agreed to settle the Class claims for work you performed as Home Health Care Worker. The Court has not decided who is right and who is wrong in this lawsuit. Your legal rights may be affected, and you have a choice to make now. These rights and options are summarized below and are fully explained in this Notice.

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

PARTICIPATE As described properly completed Claim Form to participate in this settlement with this Notice. You should receive your settlement check approximately 60 days after this settlement is approved by the Court.

**EXCLUDE
YOURSELF**

If you wish to exclude yourself (“opt-out”) from the lawsuit, you must follow the directions outlined in response to Question 8 below.

OBJECT

If you wish to object to the settlement, you must write to us, at the address listed in response to Question 10 below, about why you believe the settlement is unreasonable, and must do so no later than _____, **2019**. If the Court rejects your objection, you will still be bound by the terms of the settlement for claims under New York Law unless you submit a valid and timely letter clearly stating your intention to opt-out of this lawsuit and proceed on your own.

1. Why did I receive this notice?

You have received this notice because records indicate that you worked as a Home Health Care Worker for BNV and you worked more than forty hours in any given week during the Relevant Period.

2. Why is there a settlement?

Virginia & Ambinder, LLP and Naydenskiy Law Firm LLC (“Class Counsel”), with the assistance of a certified public accountant, have analyzed and evaluated the merits of the claims made against BNV in this action, engaged in numerous in-person and telephonic calls with BNV’s attorneys, as well as the class representatives. Class Counsel has performed a confirmatory sampling audit for settlement purposes. Based upon Class Counsel’s analysis of this data, relevant law, and the substantial risks of continued litigation, including the possibility that the litigation, if not settled now, might result in a recovery that is less favorable and/or that would not occur for several years, Class Counsel entered into this proposed settlement.

3. How is the settlement amount calculated?

If you elect to participate in this settlement, you will be deemed a “Claimant.” Claimants shall receive an allocated share of the Settlement Fund pursuant to a calculation based on the Claimant’s proportionate percentage of total hours worked during the Relevant Period (numerator) as measured against the total hours worked by all Class Members (denominator) and then multiplied by \$775,000.00.

4. Procedures

If you wish to receive your settlement allocation you must submit the enclosed Claim Form and W-4 Form. You have a right to participate in this settlement regardless of your immigration status. However, to participate you must provide a Social Security Number (“SSN”) or Tax Identification Number (“TIN”) in order to receive a check. Your settlement payment will be delayed if you submit a W-4 with incomplete or missing information. If you do not have a TIN or SSN, you may still participate in the settlement so long as you obtain a TIN or SSN on or before **[180 days from mailing date]**.

5. Settlement Fund

Defendant agrees that the potential maximum that could be paid to *all* Class Members, inclusive of *all* Costs and Fees, and the Reserve Amount is Seven Hundred Seventy-Five Thousand Dollars and No Cents (\$775,000.00).

6. How do I exclude myself from the settlement?

You may exclude yourself (“opt-out”) from this case if you do not want to receive a settlement payment, but you want to maintain your right to sue BNV on your own. To withdraw from this case you **must** submit a written, signed statement to Class Counsel clearly indicating your wish to opt out of the “BNV Overtime Class Action Settlement.” You **must** include your name, address, and telephone number in your opt-out letter to Class Counsel. To be effective, your opt-out letter **must** be faxed, emailed or mailed via First Class Mail to the address below, and postmarked by **[REDACTED], 2019.**

Settlement Claims Administrator
_____, NY
Tel: _____ Fax: _____
E-Mail: info@_____.com
RE: BNV Home Care

7. What happens if I do not opt-out by **[REDACTED], 2019.**

If you fail to opt-out by **[BAR DATE] 2019** then you will automatically be part of this settlement. If you file the enclosed Claim Form, you will be entitled to receive your allocated share of the settlement. If you do nothing, you will still be part of the settlement, however, you will not receive anything; your NYLL claims in this case against BNV for unpaid overtime, wage notice violations and liquidated damages will be dismissed with prejudice by the Court. However, you will not release your federal FLSA claims. You will also not release or relinquish claims that have been asserted in the action pending in New York Supreme Court, Kings County, and titled *Ullieva v. BNV Home Care Services, Inc.*, Index No. 503309/2016 (“Ullieva”), including, but not limited to, any claims associated with claims arising from alleged minimum wages owed for work performed on 24-hour live-in shifts, provided, however, in the event of any recovery or judgment in *Ullieva*, BNV shall be entitled to a set off against any amounts due to any claimant who is entitled to recover in *Ullieva* equal to any amount that claimant receives in this litigation, so that no claimant recovers more than once for the same overtime hours. In *Ullieva*, Plaintiff, on behalf of herself and all others similarly situated, alleges that former and/or current home health care aides employed by BNV at any time since March 8, 2010, are owed unpaid wages for each and every hour of a 24 hour shift, along with overtime compensation and wages and/or benefits under NY’s Wage Parity Law and NYC Administrative Code. BNV paid employees for 13 hours of a live-in shift, and wholly denies it owes any compensation or benefits.

8. If I exclude myself (“opt-out”), can I get money from this settlement?

No. If you exclude yourself, you will not receive any money from this lawsuit.

9. How will the lawyers be paid?

LaDonna Lusher and Joel Goldenberg of Virginia & Ambinder, LLP, 40 Broad Street, 7th Floor, New York, New York 10004, 212.943.9080 and Gennadiy Naydenskiy of Naydenskiy Law Firm LLC, 281

Summerhill Road, Suite 210, East Brunswick, New Jersey, 08816, represent you in this case. Class Counsel will ask the Court to approve a fee of no more than one-third of the Settlement Fund. The Court-approved fee will pay Class Counsel for investigating the facts, litigating the lawsuit, and negotiating and overseeing the settlement. The Court will ultimately decide the amount that will be paid to Class Counsel. If you do not choose to join this settlement, or if you opt out of the Class and want to be represented by your own lawyer, you may hire one at your own expense.

10. How do I tell the Court that I don't like the settlement?

You can object to the settlement if you don't like any part of it. You must give reasons why you think the Court should not approve it. The Court will consider your views. If the Court rejects your objection, you will still be bound by the terms of the settlement of your claims under New York Law unless you have submitted a valid and timely request for exclusion ("opt-out"). To object, you **must** send a letter saying that you object to this proposed settlement. Your statement **must** include all reasons for the objection and any supporting documentation. Your statement **must** also include your name, address, and telephone number. If you wish to present your objection at the Fairness Hearing described below, you **must** state your intention to do so in your written objection. Submit the objection to Class Counsel via fax, email or First-Class Mail at the address below. Your objection will not be heard unless it is received by the Settlement Claims Administrator by **_____, 2019.**

Settlement Claims Administrator

_____, NY
 Tel: _____ Fax: _____
 E-Mail: info@_____.com
RE: BNV Home Care

Class Counsel will file your objection with the Court.

11. What's the difference between objecting and excluding?

Objecting is simply telling the Court that you don't like something about the settlement. You can object only if you do not exclude yourself. Excluding yourself ("opting-out") is telling the Court that you do not want to be part of the Class and this proposed settlement. If you exclude yourself, you have no basis to object because you will no longer remain a party to this action. If you do not opt-out of the settlement you will be deemed to have released your NYLL claims in this lawsuit against BNV, but not your federal FLSA claims.

12. When and where will the Court decide whether to approve the settlement?

The Court will hold a Fairness Hearing at _____ **m. on _____ 2019**, at the United States District Court for the Eastern District of New York Courthouse, _____ Street, Brooklyn, New York, in Courtroom _____. At this hearing the Court will consider whether the terms of the settlement are fair, reasonable, and adequate. If there are objections, the Court will consider them. The Court may also decide how much to pay to Class Counsel. After the hearing, the Court will decide whether to approve the settlement. We do not know how long these decisions will take.

**YOU ARE NOT REQUIRED TO ATTEND THE FAIRNESS HEARING IF YOU DO NOT
OBJECT TO THE SETTLEMENT**

13. Are there more details about the settlement?

This notice summarizes the proposed settlement. More details are contained in the Settlement Agreement. You can review the Settlement Agreement by asking for a copy by contacting the Settlement Claims Administrator or Class Counsel (see contact information in Questions 9 and 10).